
Supreme Court of the United States.

OCTOBER TERM, 1907.

No. —ORIGINAL—

TAMPA SUBURBAN RAILROAD COMPANY, a corporation,
Petitioner,
vs.

CENTRAL TRUST COMPANY OF NEW YORK, a corporation,
Respondent.

Answer of Respondent Central Trust Company of
New York to Petition of Tampa Suburban
Railroad Company for Writ of Certiorari.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Respondent,

54 WALL STREET,
New York, N. Y.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel.

Supreme Court of the United States.

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TAMPA SUBURBAN RAILROAD COMPANY, a
corporation,

Petitioner,

vs.

CENTRAL TRUST COMPANY OF NEW YORK, a
corporation,

Respondent.

The answer of the Central Trust Company of New York to the petition of the Tampa Suburban Railroad Company for writ of *certiorari*.

Said Central Trust Company of New York, saving and reserving unto itself all benefit and advantage of exception to the said petition, for answer thereunto, or unto so much and such parts thereof as it is advised it is material to make answer unto, saith :

I.

It believes to be substantially true the allegations contained in said petition concerning the incorporation of the petitioner and of the Consumers' Electric Light and Street Railroad Company, and of said Central Trust Company of New York.

II.

It admits that on July 22, 1897, it filed its bill of complaint in the Circuit Court of the United States for the Southern District of Florida against said Consumers' Electric

Light and Street Railroad Company and said petitioner, but, for an exact statement of the contents of said bill, it prays that reference may be had to the record herein when the same shall be produced before this Honorable Court, and saith that the allegations of said petition in that behalf do not contain a complete statement of the matters and things alleged in said bill.

III.

It admits that said bill, so filed, had the signature of said Central Trust Company of New York and of its solicitors thereto, and was sworn to by G. Sherman, vice-president of said trust company, in the usual form, and that to said bill was attached, as an exhibit, a printed copy of the trust deed referred to in said bill, and it prays that reference may be had to the copy of said trust deed, which is part of the record herein, when the same shall be submitted to this Honorable Court, and it denies that the material provisions of said trust deed are all set forth in said petition; and it is informed and believes that it is not true that the provisions of said trust deed numbered two and three are void under the laws of Florida.

It says that it is not true that said trust deed was executed in the exact form set forth in said petition, but alleges that the trust deed was executed under the corporate seal of the Consumers' Electric Light and Street Railroad Company thereto duly affixed, as will appear by reference to the original of said trust deed, and to the record thereof, though, by an oversight, the printed copy filed as an exhibit to the bill of complaint filed by said Central Trust Company of New York did not show that the original of said bill of complaint had thereto affixed the corporate seal of said Consumers' Electric Light and Street Railroad Company. And it further saith that the E. S. Douglass who signed said trust deed as president, and the John T. Douglass who signed said trust deed as secretary of said Consumers' Electric Light and Street Railroad Company, were, until about the month of January, 1897, president and secretary also of the petitioner, and have since January, 1897, continued to be directors of both of said companies, and that the petitioner has ever since the making thereof had full and actual knowledge and notice of the existence of said mortgage to said Central Trust Company of New York, and of the issue of bonds outstanding thereunder.

IV.

It admits that said bill of complaint and exhibit were on July 22, 1897, presented to Judge PARDEE, at Wadsworth, Ohio, but denies that the same were so presented without any notice to either defendant, and alleges that at the time and place said bill was so presented Chester W. Chapin, the president of both the defendant companies, was present in person and consented to the application. For a particular statement of the contents of the order made, said Central Trust Company prays that reference may be had to the record of this cause when the same shall be presented to this Honorable Court. It believes it to be true that said order was served as in said petition alleged, and that on or about July 27, 1897, notice of an application before Judge PARDEE on August 2, 1897, was served, together with an affidavit of Chester W. Chapin, substantially as alleged in said petition, but prays that reference may be had to the record of the cause for an exact statement concerning these matters and things.

V.

Answering the allegations contained in the articles of said petition numbered V., VII. and VIII. (there being no article numbered VI.) it admits that on August 4, 1897, the solicitors and counsel for said Central Trust Company and for said Consumers' Electric Light and Street Railroad Company appeared before Judge PARDEE, at Wadsworth, Ohio, pursuant to said notice, and that at the same time petitioner was present by counsel claiming to be its counsel, and that it made certain objections, the nature of which will more fully appear by reference to the record of this cause, and that Judge PARDEE overruled said objections and proceeded with the hearing of the application, and that an amendment and supplement to the bill of said Central Trust Company was thereupon duly presented and filed, together with certain affidavits, all of which will more fully appear by reference to the record of this cause, when the same shall be produced to this honorable Court; and for a true statement of the contents of the amendment and supplement to said bill, and of the affidavits presented therewith and the other papers submitted to Judge PARDEE upon said application, the said Central Trust Company prays that reference may be had to the record of this cause when the same

shall be produced, and denies that the allegations of said petition concerning the contents of the papers so produced are true. It alleges that affidavits were made and filed by, and on behalf of, petitioner after full opportunity had been given said petitioner to examine the papers presented and filed on behalf of said Central Trust Company; that argument of the application was had on both sides, and that full consideration of the application was given by Judge PARDEE, and that thereupon Judge PARDEE made an order appointing Chester W. Chapin Receiver, substantially as alleged in said petition, as will more fully appear from the record of this cause when the same shall be produced. Said Central Trust Company admits that Chester W. Chapin, who was appointed Receiver, was the president of both defendant companies, and alleges that he or his wife owned and held all the bonds secured by the mortgage sought to be foreclosed in said suit except twenty-seven; that he was a large stockholder of the Consumers' Electric Light and Street Railroad Company, and largely interested in the stock of the Tampa Suburban Railroad Company, and that in addition he or his wife had advanced substantially all the money which had been put in said two defendant corporations, and was the holder of most of the floating debt of said corporation; that the wife of said Chester W. Chapin is the holder of all the bonds issued under the mortgage of the Tampa Suburban Railroad Company, petitioner herein.

It denies that said Chester W. Chapin was the man under whose management the Consumers' Company had reached its alleged condition of insolvency, and alleges on the contrary thereof that the condition of insolvency had been caused by the mismanagement of E. S. Douglass and John T. Douglass, who had control of the management of said properties until January, 1897, and who, pretending to have control of the petitioner herein, and in furtherance of their own private schemes, and seeking to wrest away the mortgaged property from the real owners thereof, pretended to cause a lease of the property of said Consumers' Electric Light and Street Railroad Company to be made to the petitioner as herein-after set forth, and pretending to act in the name of said petitioner, are really prosecuting these proceedings and attempting to hinder and delay the only persons having any substantial interest in the property from enforcing their rights therein.

Said Central Trust Company alleges that said E. S. Douglass on July 15, 1897, pretended to hold a meeting of the Board of Directors of said Consumers' Electric Light and Street Railroad Company,

but that no notice of said meeting was given to the directors as required by the by-laws of said company, and the directors really interested in the property, to wit, Chester W. Chapin and the other directors representing his interests, were not present; that at said meeting it was pretended to authorize a lease of all the property of the Consumers' Electric Light and Street Railroad Company to the petitioner, but that such action was wholly void and was set aside at a meeting of the directors of said Consumers' Electric Light and Street Railroad Company duly and regularly called and held July 21, 1897, and prior to the granting of the restraining order herein; that though duly notified of such action of the Board of Directors said E. S. Douglass and John T. Douglass refused to surrender possession of the property or to obey said restraining order and wholly disregarded the same; that at the time of the pretended authorization of said lease the petitioner Tampa Suburban Railroad Company had merely a nominal existence, all of its property having been leased some years before to the Consumers' Electric Light and Street Railroad Company for the term of ninety-nine years.

Said Central Trust Company further alleges that suit has been brought to foreclose the mortgage of said Tampa Suburban Railroad Company, securing \$50,000 of bonds, by reason of default made in payment of interest upon said mortgage January 1, 1896, July 1, 1896, January 1, 1897, and July 1, 1897, which has continued until the present time, and that in said suit said Chester W. Chapin has also been appointed Receiver of the mortgaged property, and as such Receiver has taken into his possession and under his control substantially all the street railroad and appurtenant property covered by the mortgage of said Consumers' Electric Light and Street Railroad Company to said Central Trust Company of New York.

Further answering the allegations of Article VIII. of said petition, it admits that said Chester W. Chapin duly filed his bond as Receiver and took possession of the mortgaged property, and is still in possession of and operating the same, and receiving the revenues thereof, but denies that this is contrary to any rights of petitioner. It admits that petitioner has filed in the Circuit Court of the United States for the Southern District of Florida motions to discharge, annul and set aside the orders made by Judge PARDEE, and alleges that such motions have never been brought on for argument, but denies that said motions have remained undisposed of because there

is no United States Judge within said Fifth Judicial Circuit who has authority to hear and determine the same, and alleges on the contrary that for a month past there have been Judges present within said Fifth Judicial Circuit having authority to hear and determine said motions.

Said Central Trust Company further alleges that no appeal has been taken from said orders or either of them.

VI.

Said Central Trust Company denies the allegation of Article IX. of said petition that all the said proceedings and holdings in said cause in said Circuit Court will more fully and at length appear in the certified record filed with said petition, and shows that the exhibits filed with said petition consist of a wholly inadequate transcript of the record, showing merely such parts thereof as petitioners deem to be favorable to their contention, and omitting entirely the most material parts of said record, upon which Judge PARDEE acted in making the orders mentioned.

Said Central Trust Company further alleges that the Tampa Suburban Railroad Company has no real interest in this petition, and that this application is made not in its interest, but in the interest of said E. S. Douglass and John T. Douglass; that at the time said orders were made by Judge PARDEE it was absolutely necessary that the same should be made to prevent the grossest injustice upon the owners of the property, sought to be perpetrated by said E. S. Douglass and John T. Douglass; that at the time said applications were made there was no Judge of the United States Courts within the Fifth Circuit to whom application for a Receiver might be made, and that instant action was necessary to prevent the ruin of the mortgaged property, which had already been commenced by the said E. S. Douglass and John T. Douglass by pretending to make said lease to the petitioner on or about July 15, 1897, without due action of the board of directors or notice to the parties interested, and when the real owners of the property were absent, and, therefore, would not be likely to be advised of the proceedings until after the same had been carried through; and it alleges that the order appointing said Chester W. Chapin as Receiver was made after full opportunity had been given to the petitioner to be heard, and after said petitioner had been heard most fully.

And, having answered said petition, said Central Trust Company of New York prays that the same may be dismissed.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Central Trust Company of New York.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
STATE, CITY AND COUNTY OF NEW YORK, }

E. FRANCIS HYDE, being duly sworn, says that he is an officer—to wit, second vice-president—of the Central Trust Company of New York, named in the foregoing answer; that he has read the said answer, and that the matters and things therein stated are true, to the best of his knowledge, information and belief.

E. FRANCIS HYDE.

Sworn to and subscribed before me this 24th day of }
November, 1897.

WM. F. JUDSON,

[SEAL.]

Notary Public,

Westchester County,

Certificate filed in N. Y. Co.